

PATENT
Serial No. 09/821,122
Amendment in Reply to Office Action of November 22, 2005

REMARKS/ARGUMENT

This Amendment is being filed in response to the Office Action dated November 22, 2005. Reconsideration and allowance of the application in view of the remarks to follow are respectfully requested.

Claims 1-25 are pending in this application where claim 20-25 have been by means of the present amendment. Claims 1, 5, 9, 13 and 17 are independent claims.

By means of the present amendment, the specification has been amended for correcting a typographical error. Further, claims 2, 6, 10, 14 and 18 have been amended for better clarity. Claims 2, 6, 10, 14 and 18 were not amended in order to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents.

In the Office Action, claims 17-20 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. In response, claim 17 has been amended. It is respectfully submitted that the rejection of claims 17-20 has been overcome and an indication as such is respectfully requested.

In the Office Action, claims 1, 3-5, 7, 9, 11-13, 17 and 19-20

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are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over European Patent Application No. EP 0 926 894 (Tranchard) in view of U.S. Patent Application Publication No. 2001/0024239 (Feder). Further, claims 2, 6, 8, 10-14 and 18 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tranchard and Feder in view of U.S. Patent No. 6,192,049 (Sohraby). It is respectfully submitted that claims 1-25 are patentable over Tranchard, Feder and Sohraby for at least the following reasons.

Tranchard is directed to a scrambling unit for a digital transmission system, where data is inserted in the transport stream to make full use of available bandwidth. As correctly noted by the Examiner, Tranchard does not teach or suggest "producing an estimate of future available bandwidth within said transport stream from future programming," as recited in independent claim 1, and similarly recited in independent claims 5, 9, 13 and 17. Feder is cited in an attempt to remedy the deficiencies in Tranchard.

Feder is directed to bandwidth optimization where "the average bandwidth requirements for particular programs and/or WWW sites may be stored so that the required bandwidth may be better estimated," as recited on page 17, paragraph [0371]. Thus, Feder is concerned

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with estimating required bandwidth.

In stark contrast, the present invention as recited in amended independent claim 1, and similarly recited in independent claims 5, 9, 13 and 17, amongst other patentable elements, requires:

an insertion unit inserting scheduled insertion content within said transport stream by replacement of selected replaceable content within said transport stream to form a new transport stream if sufficient bandwidth is available, said sufficient bandwidth being determined from said estimate of future available bandwidth and said required insertion bandwidth.
(Emphasis added)

These features are nowhere taught or suggested in Tranchard, and Feder, or combination thereof. Sohraby is cited to allegedly show other features and does not remedy the deficiencies in Tranchard, and Feder.

Accordingly, it is respectfully submitted that independent claims 1, 5, 9, 13 and 17 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-4, 6-8, 10-12, 14-16 and 18-25 should also be allowed at least based on their dependence from independent claims 1, 5, 9, 13 and 17, as well as for the separately patentable elements contained in each of the dependent claims.

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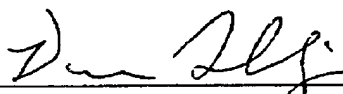
In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

It is believed that no additional fees or charges are currently due beyond the fee for five additional claims in excess of twenty to be charged to the credit card as noted by the enclosed authorization. However, in the event that any additional fees or charges are required for entrance of the accompanying amendment, they may be charged to applicant's representatives Deposit Account No. 50-3649. In addition, please credit any overpayments related to any fees paid in connection with the accompanying amendment to Deposit Account No. 50-3649.

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In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
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February 21, 2006

Enclosure: Authorization to charge credit card \$250 for 5 claims
in excess of 20 (25 total)

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